

D.T.E. 00-101 December 14, 2000

Investigation by the Department of Telecommunications and Energy of Verizon New England, Inc. d/b/a Verizon Massachusetts' Sixth Annual Price Cap Compliance filing, filed with the Department on October 2, 2000, tariff revisions to M.D.T.E. No. 10 to become effective December 15, 2000.

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INTERLOCUTORY ORDER ON SUSPENSION OF VERIZON MASSACHUSETTS'  
SIXTH ANNUAL PRICE CAP COMPLIANCE FILING

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## I. INTRODUCTION

On October 2, 2000, Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon" or "Company") filed revisions to its tariff M.D.T.E. No. 10 with the Department of Telecommunications and Energy ("Department") in compliance with NYNEX Price Cap, D.P.U. 94-50 (1995). The filing constitutes the Company's sixth annual filing under price cap regulation. The Department docketed this matter as D.T.E. 00-101. The Company proposes that the tariff revisions become effective on December 15, 2000, unless suspended or disallowed by the Department.

The Company's filing proposes a \$38.77 million reduction in overall revenue, representing a 2.09 percent reduction in intrastate revenues. The reduction includes a \$34.4 million decrease for residential customers, and a \$4.37 million decrease for business customers.

Pursuant to notice duly issued, the Department held a public hearing at its offices on December 6, 2000, to afford the public an opportunity to comment on the Company's compliance filing. The Attorney General of the Commonwealth intervened as of right, pursuant to G.L. c. 12, § 11E. The Department granted the petitions to intervene of AT&T

Communications of New England, Inc. ("AT&T"), New England Public Communications Council, Inc. ("NEPCC"), and WorldCom, Inc. ("WorldCom").

On December 1 and December 4, 2000, the Attorney General, NEPCC and AT&T filed comments with the Department addressing whether to suspend rates pending a Department investigation. The Attorney General and NEPCC urged the Department to allow the rates to go into effect on December 15, 2000, whereas AT&T asked the Department to suspend and investigate the proposed rates. On December 11, 2000, Verizon and the Attorney General submitted reply comments. In its reply, Verizon argued that the Department should reject AT&T's claims and permit Verizon's Price Cap tariff to become effective immediately subject to further investigation.

## II. SUMMARY OF THE COMPLIANCE FILING

The Company's October 2, 2000 Compliance Filing revises M.D.T.E. No. 10 as follows:

### For Residential Customers

- Increases charges for certain Phonesmart Service Features.
- Eliminates the following non-recurring charges associated with Residence service orders: Element 1-Service Ordering, Element 1-Other Charges, and

#### Touch-tone Change Charge.

- Reduces the following non-recurring charges associated with Residence service orders: Element 2-Central Office Line Connection, Restoral of Service, and Temporary Suspension of Service-Reconnection.
- Reduces the monthly recurring rate for Eastern LATA SoundDeal Package service.
- Reduces the Local Package monthly recurring rates.
- Increases the Three-Way Calling monthly rate and associated Custom Calling Service package monthly rates.
- Reduces the Bay State East Overtime per minute rate.
- Reduces the per line rate for Metropolitan and Bay State Metropolitan services.
- Eliminates recurring and nonrecurring charges for Virtual Integrated Services Digital Network ("ISDN").
- Reduces revenues associated with the Sensible Minute Plan.

#### For Business Customers

- Reduces the Eastern Massachusetts day period per minute rate and makes a corresponding adjustment to the day credit.
- Increases rates for Phonesmart Service Features.
- Recalculates the conduit license fees in accordance with the Department's Order in D.P.U. 91-218, resulting in an annual revenue decrease.
- Recalculates the Late Payment Charge interest rate in accordance with the methodology approved in the Department's Order in D.P.U. 93-204-A, resulting in an estimated annual increase.

- Eliminates the monthly recurring charge for Local Directory Assistance ("DA") for Public Access Line ("PAL") and Public Access Subscriber Line ("PASL") subscribers, and proposes to charge PAL and PASL subscribers usage-sensitive prices for DA.
- Eliminates the recurring and nonrecurring charges for Virtual ISDN.

### III. POSITIONS OF THE PARTIES

#### A. Attorney General

The Attorney General recommends that the Department allow Verizon to put into effect on December 15, 2000 the proposed rate reductions (Attorney General Comments at 2). The Attorney General states that suspension would prevent Massachusetts customers from receiving the benefits of these price reductions until the end of the statutory suspension period, and that suspension would unfairly benefit Verizon by allowing Verizon to keep the revenues associated with the delay (*id.*).

Additionally, the Attorney General proposes two suggestions for this proceeding. First, the Attorney General points out that the present Compliance Filing includes price floor calculations for measured toll services that are based on Verizon's compliance with the Department's Price Floor Order<sup>(1)</sup> even though AT&T's challenges to these price floor calculations in D.T.E. 94-185-E have not yet been resolved (*id.* at 2). Consequently, the Attorney General requests that the Department require Verizon to incorporate changes to the price floor calculations in this Compliance Filing in accordance with the resolution of the currently unresolved issues in D.T.E. 94-185-E (*id.*). Second, noting that the Department indicated in D.P.U. 94-50 that it would undertake a review of the appropriate form of regulation at the end of the term of Verizon's Price Cap Plan, which expires on August 1, 2001, the Attorney General suggests that the Department convene a working group or technical session for consideration of Verizon's upcoming 2001 Price Cap Plan (*id.* at 3).

In response to Department concern raised at the December 6, 2000 public hearing regarding the difficulty of subsequently incorporating price floor revisions reductions once rate reductions are allowed to go into effect, the Attorney General advises that if the Department is able to identify specific rate elements that are likely to be directly and significantly affected by the price floor calculations, then the Department should suspend those particular rate elements and allow remaining rate reductions to go into effect (Attorney General Reply at 1-2). Otherwise, the Attorney General urges that all rate reductions be allowed to go into effect as proposed (*id.* at 2). Furthermore, the Attorney General contends that AT&T's claims regarding the treatment of new services, the permissibility of using wholesale services data in evaluating price cap compliance, and

Verizon's failure to serve copies of cost studies regarding new services on parties other than the Department have no bearing on whether the rates should be suspended (id. at 2 n.4).

## B. AT&T

AT&T requests that the Department suspend and investigate the proposed revisions to M.D.T.E. 10 (AT&T Comments at 1). Before turning to the basis underlying its request for suspension of the proposed tariff revisions, AT&T also urges the Department to open a proceeding to consider the type of price cap plan that will replace the current plan (id. at 2-3). In support of this request, AT&T notes that the increased experience with competition since the Department established a price cap form of regulation shows that many of the assumptions made when the price cap plan was first put in place and during its early life will need to be revisited (id. at 2).

Next, AT&T raises four specific concerns with the proposed tariff revisions to M.D.T.E. No. 10. First, AT&T states that Verizon appears to have used the same faulty methodology to claim that its rates satisfy the price floor requirements which AT&T challenged in D.P.U. 94-185-E (id. at 3). Specifically, AT&T maintains that Verizon's flawed price floor calculations make it less likely that the reductions in Verizon's retail rates will violate the price floor as calculated (id. at 4). By properly calculating the price floor, AT&T argues that both the Baystate Non-Metropolitan Service and the Business Link Service fail the price floor analysis (id.). Additionally, AT&T urges the Department to consider carefully the data and assumptions underlying the price floor analysis of remaining optional calling plans which purportedly pass the price floor analysis by a narrow margin (AT&T Comments at 4-5). Hence, AT&T suggests that Verizon should be required to support its price floor analysis before its new, reduced rates for potentially competitive intra-LATA toll services are allowed to go into effect (id. at 5).

Second, AT&T argues that Verizon's treatment of new services in determining whether it has satisfied the price rules under the price cap plan need to be examined (id.). AT&T contends that for new services, especially those introduced within the 12 months preceding the annual price cap compliance filing, use of the preceding years quantity of services sold is not valid (id. 5-6). But, AT&T says, it is not clear how Verizon treats new services and, at a minimum, Verizon should be required to demonstrate how it has done so (id. at 6).

Third, AT&T raises concern as to whether Verizon should use the rates and quantities of wholesale services not subject to the price cap plan to determine compliance of services subject to the plan (AT&T Comments at 6). AT&T notes that services not subject to the price cap plan, such as services offered under Tariff No. 17 and interconnection agreements, are making up an increasing proportion of Verizon's revenues, and that it appears Verizon's October 2 filing includes revenues from these new services in its analysis (id.). Thus, AT&T asks that this issue be addressed before permitting the proposed rates to go into effect (id. at 7).

Fourth, AT&T contends that Verizon's failure to provide notice to other parties when it introduces new services and when it files support purporting to demonstrate price floor compliance violates the spirit, if not the letter of the Price Cap Order (AT&T Comments at 7). AT&T states that it only becomes aware of new services at the time Verizon files its annual price cap compliance filing, which is after the service has already gone into effect (id. at 6-7). Accordingly, AT&T argues that Verizon should be required to serve on its competitors the price floor analysis of new services that it introduces (id. at 7).

### C. NEPCC

NEPCC states that the filing and implementation of the proposed adjustments has been already delayed since June 2000, and maintains that there is no basis for further delay in implementation (id.). NEPCC argues that further delay would only deprive the affected parties of the benefit of the proposed changes, which are not controversial (id.). NEPCC notes that its particular interest is with the adjustment of the local directory assistance rate on public access lines used by its members, and that the proposed change merely returns to the scheme in effect prior to the current flat, per line charge, to reflect current usage levels (id. at 2). Accordingly, NEPCC urges the Department to allow the changes proposed by Verizon in its Compliance Filing to take effect on December 15, 2000 (NEPCC Comments at 1).

### D. Verizon

Verizon does not dispute that the Department's decision in D.P.U. 94-185-E may impact the calculations of price floors for certain rate changes proposed in this filing, but states that if changes are required, it will make the necessary rate adjustments (Verizon Reply at 2-3). Moreover, even if the Department rules in AT&T's favor, Verizon contends that the change in the proposed rate would be minuscule, and that the impact on the Compliance filing would be so small that there should be no concern about any potential "seesaw" rate effect on consumers (id. at 3-4).

Verizon also maintains that AT&T's arguments regarding inclusion of wholesale services, and pertaining to the treatment of new services, are both without merit (id. at 4). First, Verizon states that it has included all wholesale services in all annual price cap compliance filings, and the Department has repeatedly approved them (id.). Verizon argues that under the Department's Price Cap Plan, Verizon is directed to include all monopoly services, and to exclude only sufficiently competitive services, and that one obvious impact of excluding wholesale services from the Compliance Filing would be a decrease in Verizon's proposed overall revenue reduction because the base for calculating the pricing indices would be reduced by the amount of wholesale revenues excluded (id. at 4-5). Likewise, Verizon indicates that it has followed the same procedure for treatment of new services previously accepted by the Department in prior price cap compliance filings and should not be subject to a change in the rules of the game in this filing (id. at 5).



Finally, Verizon maintains that the establishment of a requirement that Verizon notify carriers regarding new services, and the request to establish a working group or convene a technical session to review a new regulation plan are out of place in this proceeding (Verizon Reply at 5-6). Verizon states that interested carriers can monitor one another's tariff filings, which appropriately places the responsibility on the carrier seeking such information (*id.* at 5). Moreover, Verizon states that establishment of a review process for a new plan is a separate issue, and that Verizon will propose a successor plan at the appropriate time (*id.* at 6).

#### IV. ANALYSIS AND FINDINGS

As with prior annual filings, the issue for determination in this Interlocutory Order is whether to allow the rate changes proposed by Verizon to become effective on December 15, 2000, as filed, or to suspend the proposed changes, in whole or in part, pending further investigation. Pursuant to G.L. c. 159, §§ 19 and 20, the Department is "accorded broad discretion in allowing, suspending and investigating proposed changes to tariffs." See also NYNEX First Annual Price Cap, D.P.U. 95-83, at 14 (1995) (citations omitted).

As to the Attorney General's and AT&T's concerns regarding the methodology used to calculate the price floor, we agree that further investigation of these calculations is warranted. But the Department is unpersuaded that these claims warrant suspension of the rates as AT&T suggests. In the past, the Department has declined to suspend a tariff where Verizon has made a sufficient showing to warrant allowing proposed tariff changes. See NYNEX Third Annual Price Cap, D.P.U. 97-67, at 10 (1997). Consistent with D.T.E. 98-67, at 15-16, Verizon has made a prima facie showing that its rates meet the Department's price floor rules as they currently exist. See D.T.E. 98-67, at 15-16 (Verizon may satisfy the D.P.U. 94-50 price floor rules by filing a wholesale tariff for its retail and non-premium toll services).

Regarding premium toll services, until the Department concludes its review of Verizon's compliance filing in D.P.U. 94-185-E, we will not be able to determine fully whether Verizon's proposed premium toll service rates exceed the price floors. The Department anticipates issuing its decision in D.P.U. 94-185-E in the immediate future. Thereafter, Verizon may need to make changes to its calculations based on that order, which will need to be reviewed by the Department. This continuing work will take some additional time. Rather than delay the immediate benefits to consumers of the \$38-plus million in revenue reductions, we find that the rates should take effect now and if, based on the results of the D.P.U. 94-185-E examination, revisions to Verizon's rates are necessary, these changes can be made at the appropriate subsequent time.

We are also unpersuaded by AT&T's challenge to Verizon's policy of using rates and quantities of wholesale services not subject to the price cap plan to determine the

compliance of services subject to the price cap plan. The Department has consistently held that as long as Verizon complies with the Price Cap's pricing rules, it has the discretion to determine rate changes. Based on the demonstration so far, Verizon has made a *prima facie* showing that it complies with the pricing rules. Therefore, we will allow the rates to take effect. If an adjustment is necessary after a full investigation, the Department will require it at that time.

Turning to AT&T's challenge to the introduction of new services with its Price Cap filing, AT&T previously raised this issue in prior price cap compliance filings. See D.P.U. 96-68 at 12. As we stated before, nothing in D.P.U. 94-50 precludes Verizon from introducing new services, and Verizon has the discretion to introduce new services between annual filings or at the time of annual filings. See id. Moreover, AT&T's claim that the Department should require Verizon to provide its competitors with notice of new services fails to persuade us that suspension is warranted in this case.

Finally, although the Attorney General and AT&T's suggestion that the Department convene a working group or technical session to begin discussion of the form of alternatives that will replace the price cap is well taken, the Department agrees with Verizon that this is a separate issue that has no bearing on the approval of rates in the Sixth Annual Price Cap Compliance Filing. Therefore, the Department declines to establish a formal review process in the context of this proceeding.

Accordingly, for the reasons stated above, we permit Verizon to put into effect the rate changes as proposed, pending further investigation.

V. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: That revisions to tariff M.D.T.E. No. 10, filed with the Department on October 2, 2000, by Verizon New England, Inc. d/b/a Verizon Massachusetts, be allowed to take effect on December 15, 2000, subject to further investigation, consistent with the procedural schedule established by the Department on December 6, 2000.

By Order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner

1. D.T.E. 94-185-E (August 3, 2000) ("Price Floor Order").